

LEGAL Bulletin

To: All School Committee Members and Superintendents

From: Stephen J. Finnegan Esq., MASC General Counsel

Date: May 17, 2016

RE: SCHOOL COMMITTEES AUTHORITY TO TAKE POSITIONS ON BALLOT QUESTIONS

I have been asked by several individuals whether a school committee could legally take a position on a ballot question. These inquiries are generated by ballot questions, which may impact school districts that will be on the November ballot. It will not surprise you that influencing ballot questions (local overrides or statewide issues) is a somewhat complicated matter. This Bulletin is not intended as a substitute for a complete review of the various advisories found below.

In the seminal case on this issue *Anderson v. City of Boston*, 376 Mass.178, 199 [1978] the Supreme Judicial Court noted that the "plaintiffs conceded that the mayor and persons in relevant policy-making positions in city government are free to act and to speak out in support of the classification amendment," which was a ballot question to be decided by the voters in November of 1978. The Office of Campaign & Political Finance has interpreted *Anderson* to allow a governmental body "to endorse, or vote as a body to endorse, a ballot question, and may issue statements supporting or opposing a ballot question." OCPF-1B-92-02 page 3B. According to OCPF a governmental body may hold an informational forum concerning the committee's position on a ballot question and distribute an analysis to persons requesting such information and may make a reasonable number of copies for persons attending the meeting. If the governmental body distributes a notice of a forum, such a notice may not discuss the substance of the ballot question or contain an argument for or against the question. OCPF supra. at page 4.

In *Anderson* at 196, the SJC found that the "Commonwealth has an interest in assuring that a dissenting minority of taxpayers is not compelled to finance the expression on an election issue with which they disagree." OCPF, in response to the above referenced quote has stated that the Supreme Judicial Court indicated that public resources may generally not be used for political purposes. OCPF -1B-91-01 page 2, has defined "governmental resources" to include anything that is paid for by taxpayers, e.g., personnel, paper, stationary, and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government and a bulk mailing permit.

School committee members and relevant school officials should become familiar with, at least, the following Interpretive Bulletins: OCPF-IB-92-02, *Activities of Public Officials in Support of or Opposition to Ballot Questions* and OCPF-IB-91-01 *The Use of Governmental Resources for Political Purposes* as found on the website of the Commonwealth of Mass. Office of Campaign & Political Finance. Both of these bulletins have recently been revised by OCPF. Also, the Massachusetts Conflict of Interest Law, M.G.L.c.268 A, restricts public employees' use of governmental resources, and this statute is enforced by the Ethics Commission. Please visit the MA Ethics Commission website particularly Advisory 11-1 Public Employee Political Activity for further information. **Most importantly, I strongly recommend that prior to engaging in the above referenced matters, which include many traps for the unwary, you seek the advice of your local counsel.**

SCHOOL CHOICE OPT-OUT PROVISION: Must be voted by the school committee prior to June 1

(d) Each city, town or regional school district shall enroll non-resident students at the school of such non-resident student's choice; provided, however, that such receiving district has seats available as stated in said report; provided, however, that this obligation to enroll non-resident students shall not apply to a district for a school year in which its school committee, prior to June first, after a public hearing, adopts a resolution withdrawing from said obligation, for the school year beginning the following September. Any such resolution of a school committee shall state the reasons therefor, and such resolution with said reasons shall be filed with the department of education; provided, however, that said department shall have no power to review any such decision by a school committee. G.L.c. 76, S.12B.